

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: EAST PALESTINE TRAIN
DERAILMENT

)
) CASE NO. 4:23CV0242
)
) JUDGE BENITA Y. PEARSON
)
) **ORDER**
) [Resolving [ECF No. 460](#)]

Pending is a Joint Stipulation Under [Rule 41](#) or, in the Alternative, Unopposed Motion Under [Rule 21](#) to Dismiss Norfolk Southern Corporation and Norfolk Southern Railway Company's ("Norfolk Southern") Claims Against Third-party Defendant Trinity Industries Leasing Company ("Trinity") ([ECF No. 460](#)).

The Sixth Circuit does not recognize [Rule 41\(a\)](#) as the appropriate procedural rule in dismissing some, but not all, of the defendants in a single case. "In the Sixth Circuit, a plaintiff may only dismiss an 'action' using [Rule 41\(a\)](#) and an 'action' is interpreted to mean the 'entire controversy.' " [Stapleton v. Vicente](#), No. 5:18-cv-504-JMH-MAS, 2019 WL 2494564, at *1 (E.D. Ky. June 14, 2019) (quoting [Philip Carey Mfg. Co. v. Taylor](#), 286 F.2d 782, 785 (6th Cir.), [cert. denied](#), 366 U.S. 948 (1961); [Yandell Constr. Servs., Inc. v. LMR Constr., LLC](#), No. 1:17-cv-01037-JDB-egb, 2018 WL 4375112, at *3 (W.D. Tenn. Sept. 13, 2018) (applying [Rule 21](#) "because the weight of precedent favors this construction").

For good cause shown, the unopposed motion ([ECF No. 460](#)) is granted. Trinity is dropped as a Third-party Defendant with prejudice pursuant to [Fed. R. Civ. P. 21](#) for the reasons

(4:23CV0242)

stated in the unopposed motion. Each party to bear their own fees and costs. Count One (negligence) and Count Four (contribution, which the Court previously dismissed without prejudice) of Norfolk Southern's Third-Party Complaint ([ECF No. 119](#)) are dismissed with prejudice as to Trinity only. Norfolk Southern's claims against Third-party Defendants OxyVinyls LP, GATX Corporation, and General American Marks Company remain pending.

IT IS SO ORDERED.

June 3, 2024
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge